IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2265 OF 2007.

1. SHRI MANJIT SINGH MOOLSINGH SETHI]
ADULT, INDIAN INHABITANT,]
AGED 60 YEARS, OCCUPATION: BAR OWNER]
RESIDING AT E/24, SUKHDAYAK SOCIETY]
J.B.NAGAR, ANDHERI (EAST),]
MUMBAI - 400 059]

2. SHRI VICKY MANJIT SINGH SETHI]
ADULT, INDIAN INHABITANT]
AGED 27 YEARS, OCCUPATION: BUSINESS]
RESIDING AT F/24 SUKHDAYAK SOCIETY,]
J.B.NAGAR, ANDHERI (EAST),]
MUMBAI 400 059]..PETITIONERS

VERSUS.

1. THE STATE OF MAHARASHTRA]
2. MR. SUNIL RAMAND, DEPUTY COMMISSIONER] OF POLICE, MATUNGA ZONE IV, MUMBHAI]..RESPONDENTS

MR. MAHESH JETH MALANI, SENIOR COUNSEL WITH SHRI S.N.RAJ ADVOCATE FOR THE PETITIONERS.
MR. D.S.MHAISPURKAR APP FOR RESPONDENTS.

CORAM : SRI R.M.S.KHANDEPARKAR AND SRI A.A. SAYED, JJ.
DATE : DECEMBER 20, 2007.

ORAL JUDGMENT (PER R.M.S.KHANDEPARKAR,J.)

1. Heard.

2. Rule. By consent, the rule is made returnable forthwith.

3. By the present petition, the petitioner No.1 is seeking to quash and set aside the Order of externment against him passed on 26th November, 2007 by the respondent No.2.

4. So far as the petitioner No.2 is concerned, the learned Counsel appearing for the petitioners has submitted that there is no order issued against him and, therefore, the petitioners are not pressing for any relief in this petition so far as the petitioner No.2 is concerned.

5. The Petitioner No. 1 herein is the proprietor of Bar and Restaurant known as Karishma Bar and Restaurant situated at Dadar (East)Mumbai. Both the petitioners have been convicted for the offence punishable under Section 365, 367, 368, 394 and 397 of the Indian Penal Code by the Additional Sessions Judge, Mumbai on 6th February, 2007 in relation to CR No. V-1997 dated 7th January, 2007, which was lodged at Coloba Police Station. In an appeal against the said conviction, the petitioners have been granted bail by this Court by Order dated 7th March, 2007. A show cause notice in terms of Section 56(1) of the Bombay Police Act, 1951 came to be issued to the petitioner No.1 on 16th October, 2007 which was replied by the petitioner on 23rd October, 2007. Thereupon 2nd show cause notice dated 29th October, 2007 came to be issued under Section 57(1)(a) of the said Act, which was also replied to by the petitioner No.1 on 17th November, 2007. The matter was fixed for personal hearing of the parties on 24th November, 2007. Thereafter the impugned Order came to be passed on 26th November,

2007.

6. At the outset preliminary objection is sought to be raised on behalf of the respondent that the impugned Order having been passed in quasi judicial proceeding in terms of Chapter XVII rule 18(22) of the Bombay High Court Appellate Side Rules 1960, the matter will have to be heard and decided by the learned Single Judge. While drawing our attention to the explanation clause of the said Rules, the learned PP has placed reliance in the decision in the matter of **VASANTDADA DUGDH VYAVASAIK VIKAS ZILLA SAHAKARI SANGH MARYADIT AND ANR. VS. COMMISSIONER, DAIRY DEVELOPMENT AND ORS reported in 1991 Mah L.J. 773,** in support of his contention, while the learned Senior Counsel appearing for the petitioner has sought to rely upon the decision in the matter of **JASWANT SUGAR MILLS VS. MEERUT VS. LAKSHMI CHAND AND ORS reported in AIR 1963 SC 677, INDIAN NATIONAL CONGRESS (I) VS. INSTITUTE OF SOCIAL WELFARE, reported in AIR 2002 SC 2158 and DEEPCHAND AND ORS. VS. LAND ACQUISITION OFFICER AND ORS. (1994) 4 SC 99,** in support of his contention about the jurisdiction of the Division Bench to decide the matter in view of the provisions of law comprised under Explanation to clause Rule 18 of Chapter XVII, Appellate Side Rules.

7 The contention of the learned PP is that since

the provisions of law comprised under Section 59 of the Act requires hearing to be given to the concerned party and it also require a show cause notice to be issued before final order being passed besides that concerned authority is empowered to examine the witnesses, it would be the requirement of law that the rules of natural justice are to be complied with, and as such the proceedings would be of quasi judicial nature, and therefore the Order which is passed in such a proceeding would be the one which can be subjected to judicial review before a learned Single Judge. On the other hand, the learned Senior Counsel appearing on behalf of the petitioner submitted that the explanation clause clearly requires that only the orders passed by any judicial or quasi judicial authority can be challenged before a Single Judge, besides that it should be in a proceeding which calls for adjudication of some right under the statute. According to him, in a proceeding under Section 56 and 57 which is to be conducted in terms of Section 59 of the Act, it nowhere requires adjudication of any right under any statute by the authority though broadly speaking it may involve the right to liberty of the party but that would not include adjudication of such right of the concerned party by the concerned authority.

8. The Chapter XVII of the Appellate Side Rules deals with the matters relating to the petitions under

Article 226 and 227 of the Constitution. In terms of Rule 1(a) all such petitions are to be heard and disposed of by the Division Bench to whom the work in relation thereto is assigned by the Honourable the Chief Justice. The Rule 18 thereof carves out an exception to the said general rule and when the orders passed under various statues enumerated thereunder are subjected to the challenge by way of writ petition under Article 226 and 227 of the Constitution, the same are heard and disposed of by a learned Single Judge of this Court. The explanation clause to the said rule, however clarifies that :-

> "The expression 'Order' appearing in clauses (1) to (41) means any order passed by any judicial or quasi judicial authority empowered to adjudicate under the above mentioned statutes"

9. The Order of externment in terms of Section 56 and 57 of the said Act can be passed by the designated authority under the said Act in terms of the provisions of law by following the procedure as prescribed under Section 59 of the said Act. In terms of Section 59(1) before passing such an Order, the concerned authority has to inform the concerned person in writing of general nature of material allegations against him, so as to give him a reasonable opportunity of tendering an

explanation regarding such allegations against him. If necessary and requested by the concerned person, the officer has also to examine the witnesses and thereupon can pass an Order. There is no dispute that such an Order has to be in terms of subjective satisfaction of the concerned authority based on the materials in support of the allegations against the concerned person and that for the purpose of order under Section 56, the acts of the concerned person should reveal alarm, danger or harm to any person or property of public at large and for the purpose of Section 57 of the said Act likelihood of commission of an offence similar to the one for which concerned person had been convicted.

10. The Apex Court in **Deepchand's case (supra)** while dealing with the matter under the Land Acquisition Act and Section 49 thereof, after referring to the definition of the term 'adjudication' as is found in the Black's Law Dictionary held that the provisions of law comprised under Section 49 of the Land Acquisition Act shows that a right has been given to the owner of the land to object to the acquisition of land, when only a part of any house or building is sought to be acquired and to call upon acquisition of whole house or building. The term "adjudication" under Black's law dictionary, is defined to mean the legal process of resolving a dispute, the formal giving or pronouncement of judgment or decree of a Court

proceeding, also the judgment or decision given, the order or a decree of court is in respect of the party's right in a case upon hearing by Court after notice of legal evidence on factual issue involved. Obviously, adjudication would comprise of determination of a dispute between two parties in relation to the right claimed by each of them before an authority competent to resolve such dispute in accordance with the provisions of the law.

11. Plain reading of Section 59 of the said Act nowhere discloses adjudication of any dispute as such, nor it discloses any pronouncement of decision of any right of the concerned party. It merely pertains to the action on the part of the police authorities for maintenance of law and order within the jurisdiction of the concerned authority. Undoubtedly, the proceedings requires the authority to comply with the rules of fair play and offer an opportunity to the concerned party to put forth his say in the matter before the person is externed from an area. Undoubtedly action results in affecting the civil rights of the parties. However, the action nowhere includes any decision on any right of the party by the concerned authority, nor any adjudication thereof, besides that the order is based on subjective satisfaction of the concerned authority.

12. In **Jaswant Sugar Mills Ltd's case** the Apex

Court while dealing with the point as to whether the decision of the authority can be said to be judicial or purely administrative, held that :-

> "....A judicial decision is not always the act of a judge or a tribunal invested with power to determine questions of law or fact: it must however be the act of a body or authority invested by law with authority to determine questions or disputes affecting the rights of citizens and under a duty to act judicially. A judicial decision always postulates the existence of a duty laid upon the authority to act judicially. Administrative authorities are often invested with authority or power to determine questions, which affect the rights of citizens. The authority may have to invite objections to the course of action proposed by him, he may be under a duty to hear the objectors, and his decision may seriously affect the rights of citizens but unless in arriving at his decision he is required to act judicially, his decision will be executive or administrative."

It was specifically ruled that:-

> "...Legal authority to determine questions

affecting the rights of citizens, does not make the determination judicial; it is the duty to act judicially which invests it with that character. What distinguishes an act judicial from administrative is therefore the duty imposed upon the authority to act judicially."

13. The Apex Court in JASWANT SUGAR MILLS case (supra) has reiterated its earlier decision in case of PROVINCE OF BOMBAY VS. KUSALDAS S. ADVANI AND ORS (1950) SCN 222, wherein it was held that:-

"... In the performance of an executive act, the authority has certainly to apply his mind to the materials before him; but the opinion he forms is a purely subjective matter which depends entirely upon his state of mind. It is of course necessary that he must act in good faith, and if it is established that he was not influenced by any extraneous consideration, there is nothing further to be said about it. In a judicial proceeding, on the other hand, the process or method of application is different".

"The judicial process involves the application of a body of rules or principles by the technique of a particular psychological method.

> "It involves a proposal and an opposition, and arriving at a decision upon the same on consideration of facts and circumstances according to the rules of reason and justice"

It was further ruled that :-

> "...Generally speaking where the language of a statute indicates with sufficient clearness that the personal satisfaction of the authority on certain matters about which he has to form an opinion founds his jurisdiction to do certain acts or makes certain orders, the function should be regarded as an executive function."

14. In SIEMENS ENGINEERING AND MFT.CO. VS. UNION OF INDIA (1976) 2 SCC 981 the Apex Court had held that:

> "Where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons."

15. The Division Bench of Gujrath High Court in KRISHNA NANDLAL'S case (supra) while dealing with the

nature of the orders that can be passed under Section 56, 57 and 60 of the said Act, held that:-

> Though it is desirable that reasons should at least be briefly given in such orders, there is nothing in the provisions of this Act which would invalidate an order which does not contain reasons. So long as it is clear from the order that the authority in question applied its mind to the materials before it and so long as it is clear that the provisions of section 59 and 60 are followed there would be no justification to interfere with such orders."

It was specifically held that :-

> "There is nothing in Section 60 which would justify a conclusion that the order passed by the appellate authority would be rendered invalid if it doe not contain reasons in the manner in which a judgment of a court of law contains reasons."

16. In view of the above rulings and considering the provisions of Section 56 and 57 read with Section 59 of the said Act, it can neither be said that the proceedings thereunder are either judicial or quasi

judicial proceedings or that the authorities empowered to pass orders thereunder are judicial or quasi judicial authorities.

17. The decision sought to be relied upon the learned PP of the division bench of this Court in case of VASANTDADA DUGDH VYAVASAIK VIKAS ZILLA SAHAKARI SANGH MARYADIT's case (supra), clearly supports the view we are taking in the matter. It was clearly ruled by the Division Bench therein that when a decision in an adjudicatory proceedings under the Maharashtra Co-operative Societies Act is challenged under Article 226 or 227 of the Constitution, the matter can be dealt with by the learned Single Judge of the High Court. In other words, the order to which Rule 18 of chapter XVII of the Appellate side Rules would apply, would be those orders which are passed in "adjudicatory proceedings" and not the proceedings of the type contemplated Section 59 of the Said Act. In any case, the scope of explanation clause which was introduced in the said Rules in 1997 was not the subject matter of the decision nor was for consideration before the division bench in case of VASANTDADA DUGDH VYAVASAIK VIKAS ZILLA SAHAKARI SANGH MARYADIT's case (supra), and hence the said decision is of no help to the respondents to contend that the petition against the impugned judgment and order is required to be heard by a Single Judge.

18. As already held above the impugned order cannot be said to be a judicial or quasi judicial nor there is any adjudication of the rights of the parties and, therefore the impugned order cannot be said to be covered by the explanation clause to Rule 18 of Chapter XVII of the Appellate Rules and considering the provisions of rule 1 thereof the matter will have to be heard and decided by the division bench. The objection in this regard on behalf of the respondents therefore stands rejected.

19. It is then sought to be contended on behalf of the respondents by way of yet another preliminary objection that since the impugned order can be subjected to appeal under Section 60 of the said Act, an alternative efficacious remedy is available and hence the petitioner is not justified in seeking relief in writ jurisdiction.

20. Undoubtedly the order passed under Section 56 and 57 can be subjected to appeal to the State Government under Section 60 of the Bombay Police Act, the learned Senior Counsel appearing for the petitioner, however, drawing our attention to the decision in the matter of UMAR MOHAMMED MALBARI VS. K.P.GAIKWAD reported in 1988 (2) Bom.C.R. 724 and in case of DHANANJAY MANOHAR SAPKAL VS. STATE OF MAHARASHTRA AND ANR reported in 2005 (2) MLJ 384

submitted that in case where the petitioner is able to establish that the exercise of powers under Section 56 and/or 57 of the said Act has been arbitrarily done and further that the order has been passed without application of mind and that bias on the part of the authority is apparent on the face of the record, nothing could prevent the petitioner from seeking relief from the High Court in writ jurisdiction, besides that as such an order of externment results in illegal restriction on the liberty of an individual against whom such an order is passed.

21. The division bench of this Court in UMAR MOHAMMED's case (supra) case while dealing with the matter arising out of an order passed under Section 56, 57 read with 59 of the said Act, held that :-

> " The fact that the petitioner has not exhausted all his remedies does not bar the jurisdiction of the Court to entertain and dispose of the petition but, is a factor to be taken into account for the purpose of considering whether the discretion should or should not be exercised in favour of the petitioner The rule that the high court will not issue a prorogative writ when an alternative remedy is available does not apply when a petitioner come to the Court with an

allegation that his fundamental rights have been infringed. When an order of externment is passed against the petitioner, he can undoubtedly come to this Court with a writ petition on the ground that his fundamental right of freedom of movement is affected and this he can do without exhausting the other remedy provided for in the act viz. an appeal to the State Government against the order."

22. We are in respectful agreement with the ruling of the division bench in case of **UMAR MOHAMMED** (supra). Undoubtedly when the petitioner approaches the High Court with a grievance that his right of free movement in the country is sought to be curtailed by an authority, without disclosing sufficient cause for invoking powers under Section 56 and 57 of the said Act either in the order of externment passed by the authority or at least in the affidavit placed on record by the authority in support of such order when the same is sought to be challenged, it cannot be heard to say that the party's right to seek remedy in writ jurisdiction is barred merely because said order is appealable under the statutory provisions of the law.

23. The learned single Judge in **DHANANJAY MANOHAR SAPKAL VS. STATE OF MAHARASHTRA AND ANR reported in 2005 (2) MLJ 384** (supra) had rightly followed the

decision of the division bench in **UMAR MOHAMMED's** case (supra).

24. Merely because there is provision for appeal under Section 60 of the said Act, this Court need not abstain from entertaining the petition at the instance of the petitioner against the externment order. The preliminary objection raised in that regard, therefore, stands rejected.

25. Coming to the merits of the case, the impugned order is sought to be challenged on various grounds. Firstly, it is sought to be contended that the impugned order has been passed without providing an opportunity of being heard to the petitioner in as much as that the authority did not comply with the requirements of Section 59 of the said Act, which contention is seriously disputed by the learned PP by referring to the impugned order itself. Undoubtedly, the impugned order discloses that sufficient opportunity was afforded to the petitioner to lead evidence, however, the petitioner failed to avail the same and, therefore, the authority proceeded to pass the Order on the basis of whatever material available before it. In that regard, the contention about failure on the part of the authority to give sufficient opportunity to defend the petitioners case, cannot be accepted.

26. The learned Senior Counsel appearing on behalf of the petitioner further submitted that even before passing of the impugned order, the concerned authority proceeded to express to the media that the petitioner is a bully of crime and the said statement dated 25th November, 2007 was published in the newspapers circulated in the locality. This apparently disclosed the preconceived mind set of the authority to decide the matter in an arbitrary manner ignoring the case of the petitioner and, therefore, failure on the part of the petitioner to produce evidence in support of the contentions could not be used against him. The statement made by the authority discloses clear bias against the petitioner and the same vitiates the impugned order.

27. In respect of the alleged bias on the part of the authority against the petitioner, there is a categorical statement in that regard in the petition in paragraph No. 4(h) and a specific ground based on those pleadings in ground No. VIII. In the affidavit in reply filed on behalf of the respondent by the Deputy Commissioner of Police and the concerned Authority, who has issued the impugned order, has nowhere denied the fact of issuance of the said statement to the press and publication thereof in the news paper nor has explained the circumstances under which the said statement was made in spite of the fact

that the matter was pending before the said authority for passing appropriate order, an order which was required to be passed only after issuance of the show cause notice and hearing the parties which clearly required to the knowledge of such authority, that the concerned authority had to act fairly while passing such order and could not have preconceived mind set nor could have any bias against the person against whom the order was sought to be issued. The learned PP on being specifically asked about the said statement and the ground raised in that regard on behalf of the petitioner, neither could justify the action on the part of the authority nor could furnish any satisfactory reply or explanation in that regard. In the circumstances, the Court is left with no alternative but to arrive at a conclusion that the grievance made by the petitioner about the bias is not devoid of substance. Indeed, the authority hearing the matter in relation to the issuance of externment order against a party is not to condemn the party even before hearing the party and even before considering the materials which are required to be considered before passing the order under Section 56 and/or 57 of the said Act. The action on the part of the concerned authority as disclosed in the petition would virtually reveal bias against the petitioner and would certainly disclose preconceived mind set of the authority in relation to the order passed thereafter. This would

also disclose absence of fair play which is the mandatary requirement under Section 59.

28. The impugned Order is also sought to be challenged, as far as it relates to Section 56 of the said Act that the Authority concerned was fully aware that the Order under Section 56(1)(a) could be justified only in cases where the movements of the accused or the concerned person are causing or calculated to cause alarm, danger or harm to person or property of the public at large and not to any one individual amongst the public. The basis for exercise of the power under Section 56(1)(a) of the said Act as revealed from the impugned Order and the affidavit filed in support thereto by the authority are the conviction of the petitioner in relation to CR No. V-97, dated 7th January, 1997, CR No. 33/2004 under Section 353 of IPC at Bhoiwada Police Station and LAC No. 1100 of 2007 under Section 110 read with Section 117 at Bhoiwada Police Station. It appears that a criminal case in which the petitioner was convicted was of the year 1997. So far as CR No. 33/2004 is concerned, it relates to the incident in the year 2004 and it pertains to the alleged obstruction and terrorising the police in the performance of their duty. The impugned Order further appears to be mainly on account of LAC 1100/2007 under Section 110 read with 117 of the said Act. The case, as is referred to in

the impugned Order, refers to an alleged indecent behaviour of the petitioner in public place while the police were discharging their lawful duty. The alleged indecent behaviour was to the effect that on 6.8.2007 when PSI Shri Jitendra Kadam alongwith PSI Kumbhar came out of Krishna Bar on Madhavdas Pasta Road, Dadar (East), as they did not find any suspected elements therein, at that time, the petitioner in the presence of two to four press photographers shouted at the police team saying "BAR MADHYA ATIREKI BASALE AHET KAY? BAHER JAAVUN ATIREKI VA DARODEKHORANA PAKADA, TUMCHE BAR MADHYE KAAY KAAM AHEY? and therefore, when the police tried to convince the petitioner not to create the disturbance, he did not listen to anyone and behaved indecently with the police at the said public place by shouting "TUMHA POLISANA CHOR ATIREKI LUTARU DIST NAHI AMCHE BAR HACH DISTAT KAY?. Therefore, the petitioner was taken into custody and brought to Bhoida Police Station and action u/s 110 r/w 117 Bombay Police Act vide Bhoida Police Station LAC No. 1100/2007 was taken.

29. In relation to CR No. 33 of 2004 the so called act of the terrorising the police as described in the impugned order is to the effect that on 25.2.2004 at about 01.20 hours DCP (Operations), Mumbai and police staff carried out raid at Karishma Bar and Restaurant where some girls were allegedly dancing on the floor of

the Restaurant to the tune of recorded music and were giving obscene gesticulations, and the customers were consuming liquor and whistling. All inmates were ordered to stop dancing and not to move from their places. Thereafter the police with the help of panchas began carrying out search and drawing panchanama. At about 01.35 hours, when the drawing of panchanama was in progress, the petitioner reached the spot and allegedly threatened the police team at the top of his voice by saying AB MAIN POLICE WALLON KO MAJA CHAKHAUNGA, UNHONE MUZE CHEDA HAI, MAI UNHE NAHI CHODUNGA. When the police party tried to stop the petitioner, he rushed at the complainant and his staff and hackled the staff and tried to terrorize the police party and obstruct them from performance of their lawful duty. In this connection on the complaint of PSI Ashok Sonavane an offence under Section 353 of the Indian Penal Code was registered against the petitioner at Bhoiwada Police Station vide CR No. 33/2004.

30. There is no dispute that for an action under Section 56(1)(a) of the Bombay Police Act, the activities of a person must be of such a nature that they should be sufficient enough to cause or calculated to cause alarm, danger or harm to any person or property of the public at large. Ex facie neither the conclusion in relation to CR No. 33/2004 nor in relation to LAC 1100 /2007 reveal any activity on the

part of the petitioner which could be said to be sufficient to cause or calculated to cause alarm, danger or harm to any person or property of public at large, sufficient to warrant action under Section 56 of the said Act. The impugned Order nowhere discloses that the activities of the petitioner as revealed in the impugned Order prevented the police authorities from performing their duties or completing the part of the investigation which they were carrying out either on 25th of February, 2004 or on 6th August, 2007.

31. The provisions of law comprised under Section 56(1)(a) of the said Act, undoubtedly speaks of causing alarm, could be the ground for action under the said provision of law. In order to exercise the powers under the said provision on account of activity resulting in causing alarm, such activity must be of such a nature that unless the person is removed from a specific area and is restrained from entering into the said area, it would be difficult for the person or persons to perform their duty. Any exercise of such power should not reveal an arbitrary exercise thereof. The requirement of law under the said provision of law in that the orders therein to be passed should be from the point of view of maintenance of the public order or to prevent violence or to avoid prejudicial activities to the maintenance of the public order. Being so, it would reveal that the intention of the legislature is

to the effect that exercise of such power is not to be done arbitrarily and at the whims of the concerned authority but it is necessarily for or in relation to the maintenance of the law and order and to avoid probable disturbance in the maintenance of the public order or prejudicial activities to the maintenance of the peace in the locality and not on account of any annoyance to any one person or individual, or even to an authority. The exercise of powers in terms of Section 56 of the impugned Order nowhere discloses any such criteria having been borne in mind by the concerned authority before issuing the impugned Order.

32. The learned Senior Counsel appearing for the Petitioner also submitted that the acts on the part of the petitioner can never be said to disclose an offence under Section 353 of the Indian Penal Code. Suffice to observe that it will be too premature for this Court to deal with the said issue in this petition as it appears that independent proceedings have been initiated in that regard. However, the fact remains is that the narration in the impugned Order nowhere discloses any use of criminal force by the petitioner or assault by the petitioner on the police officer on either of the occasions.

33. As regards the Order in terms of Section 57(1) (a) read with the explanation clause thereof, the

contention on behalf of the petitioner is that it discloses total non-application of mind in as much as that the authority has sought to equate the offence punishable under Section 117 of the Police Act with the offence punishable under Chapter XVI and XVII of the Indian Penal Code, totally ignoring the provisions of the law comprised in explanation clause of Section 57 of the Bombay Police Act.

34. Section 57(1)(a) of the Bombay Police Act, 1951 provides that if a person has been convicted either of the offence under Chapter XII, XVI or XVII of the I.P.C. or of any offence under Section 65, 66A or 68 of the Bombay Prohibition Act, 1949 or of an offence under Sections 3,4,5,6 or 9 of the Suppression of Immoral Traffic in Women and Girls Act, 1956 or of an offence under Section 135 of the Customs Act, 1962 or of an offence under Section 4 or for accepting bet in any public street or thoroughfare or in any place to which the public have or are permitted to have access, or in any race course under Clause(a) of Section 12 or under Section 12A of the Bombay Prevention of Gambling Act,d 1887, the Commissioner, the District Magistrate or the Sub-Divisional Magistrate empowered by the State Government in that behalf if he has reason to believe that such person is likely again to engage himself in the commission of an offence similar to that for which he was convicted, may direct such person

notwithstanding anything contained in the Bombay Police Act or any other law for the time being in force, to remove himself outside such area and within such time as the officer may specify and not to enter or return to the area so specified from which he is directed to remove himself. Obviously, therefore, the provisions of law comprised under Section 57 of the Bombay Police Act specifically refers to the offences under Chapter XII, XVI and XVII of the I.P.C. The Chapter XII relates to offences under Section 230 to 263A, Chapter XVI refers to offences under Section 299 to 377 and Chapter XVII refers to Section 378 to 462 of the I.P.C.. Obviously, therefore, conviction under Sections 365, 367 and 368 would come under Chapter XVII of the I.P.C.. However, perusal of the order in terms of Section 57(1)(a) disclose reference to Section 117of the Bombay Police Act. As far as Section 57(1)(a) is concerned, it nowhere refers to Section 117 of the Bombay Police Act being sufficient for invoking the provisions of law comprised under the said section. Being so, on this count also the petitioners are justified in contending that the impugned order discloses total non-application of mind in as much as that the authority has sought to equate the offence punishable under Section 117 of the Bombay Police Act with the offence punishable under Chapters XVI and XVII of the I.P.C..

35. For the reasons stated above, therefore, the impugned order of externment passed against the petitioner No.1 is concerned, cannot be sustained and it is liable to be set aside and is accordingly hereby quashed and set aside.

36. Consequently, we hereby allow the petition and quash and set aside the impugned order dated 26th November, 2007 passed by the respondent No.2. Rule is made absolute accordingly with no order as to costs.

[R.M.S.KHANDEPARKAR,J.]

[A.A.SAYED, J.]

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2265 OF 2007.

MANJIT SINGH SETHI & ORS ... PETITIONERS.

VS.

THE STATE OF MAHARASHTRA & ANR ... RESPONDENTS.

MR. MAHESH MALANI, SENIOR COUNSEL FOR THE PETITIONERS.

MRS. S.D.SHINDE APP FOR THE STATE.

CORAM : SRI R.M.S.KHANDEPARKAR AND

SRI A.A. SAYED, JJ.

DATE : DECEMBER 20, 2007.

P.C.

1. For the reasons recorded separately, we hereby allow the petition and quash and set aside the impugned order dated 26th November, 2007 passed by the respondent No.2. Rule is made absolute accordingly with no order as to costs.

[R.M.S.KHANDEPARKAR,J.]

[A.A.SAYED, J.]

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 2265 OF 2007

Date of Decision : December 20, 2007.

For Approval and Signature :

The Honourable Mr. Justice R.M.S.Khandeparkar:

The Honourable Mr. Justice A.A.Sayed :

1. Whether Reporters of Local Papers may be allowed to see the Judgment?

2. To be referred to the Reporters or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges ?

6. Whether the case involves an important question of law and whether a copy of the Judgment should be sent to Nagpur, Goa and Aurangabad office?

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